SERVICEMEMBER CIVIL RELIEF ACT (SCRA)
50 USC, Appendix 501

Public Law 108-189

Effective December 19, 2003

LEGAL ASSISTANCE

MCAS YUMA ARIZONA

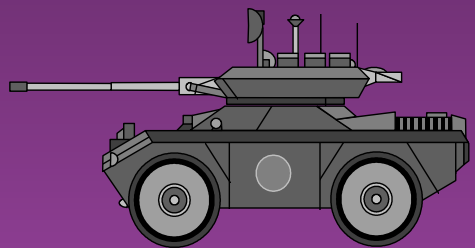
LEARNING OBJECTIVES

- **Identify and correctly rule on SCRA issues in civil cases.**
- **Apply substantive and procedural requirements of the SCRA.**
- **Discuss various alternatives facing judges to protect service members under SCRA.**
- **Discuss various means by which courts may foster the effective administration of justice in this area.**

PURPOSE OF THE SCRA

(1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

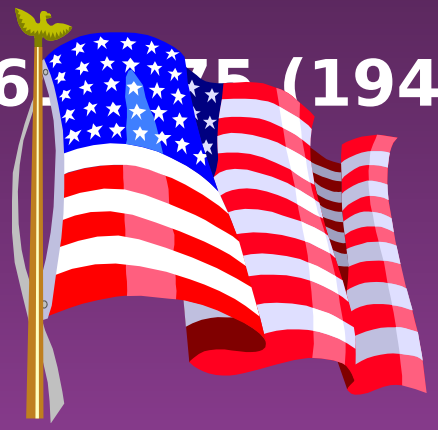
(2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.



PURPOSE

"Protect those who have been obliged to drop their own affairs to take up the burdens of the nation"

Boone v. Lightner 319 U.S. 561, 575 (1943)



PURPOSE

"The Shylock, to whom his pound of flesh is dearer than patriotism, is not the only man against whom the soldier must be given relief."

House Military Affairs Subcommittee Report, 1917

HISTORY OF ACT

- Civil War "Stay Laws”
  - **Absolute Moratorium**
- Soldier’s & Sailors Civil Relief Act (SSCRA) of 1918
  - **Introduction of Material Impairment**
- SSCRA of 1940
  - **Reenactment To Protect Those “Called To Arms”**
  - **Enactment Of § 526 Int. Rate Cap**
- 1991 Amendments
  - **Desert Shield/storm**

LIBERAL CONSTRUCTION

“The Act should be read "with an eye friendly to those who dropped their affairs to answer their country's call.”

Le Maistre v. Leffers, 333 U.S. 1, 6 (1948).

Present SCRA

- **On 19 December 2003, President Bush signed the SCRA, a complete revision of the SSCRA.**

- **The SCRA was written to:**
  - **Restate, revise & clarify the language of the SSCRA**
  - **to incorporate many years of judicial interpretation of the SSCRA**
  - **to update the SSCRA to reflect developments in American life since 1940.**

ORGANIZATION

- Amends 50 USC App. 501-593
- Title I - General Provisions
  - **Persons protected and jurisdiction**
- Title II - General Relief
  - **Default judgments and stays --§§521, 522, 524, 525**
  - **Fines & Penalties in contracts - §523**
  - **Statutes of Limitation --§526**
  - **Maximum rate of interest - §527**

ORGANIZATION (cont.)

- Title III (§§531-538)
  - Major substantive protections against evictions, termination of installment contracts, foreclosure on mortgages and termination of leases by lessees, protection to dependants
- Title IV - Life Insurance (§§541-549)
- Title V - Taxes and Public Lands
  - §571 - Residence for tax purposes

DEFINITIONS §511

Servicemember

- **Active Duty Military of 5 services -**
  - **includes Reserves and NG under Title 10**
- **National Guard under Title 32**
- **Public Health Service Officers**
- **National Oceanic & Atmospheric Officers**

Dependents

- **SM's spouse or child**
- **Person that SM provided more than 1/2 support for 180 days preceding application for relief under act.**

DEFINITIONS §511

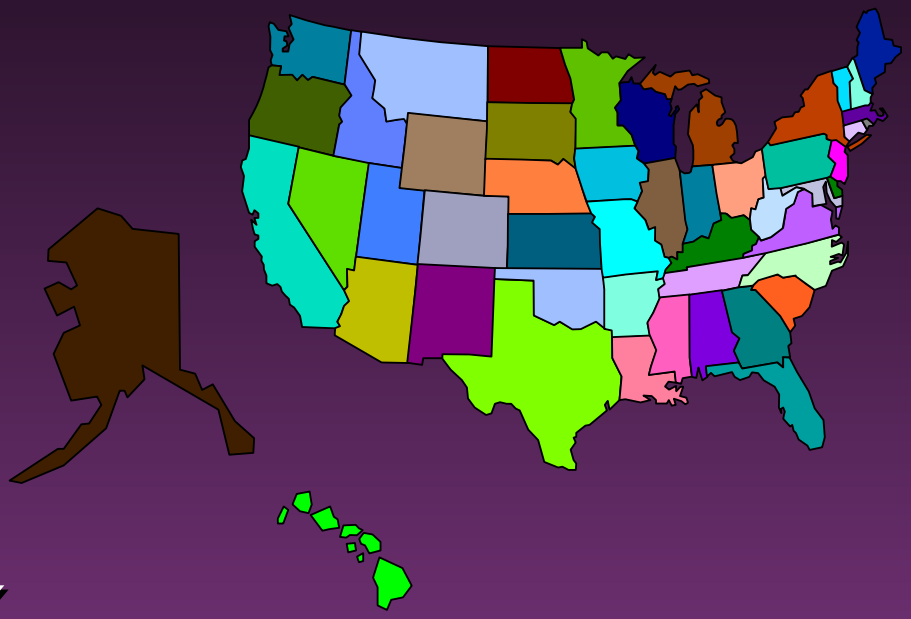
Court

- Court
- Administrative Agency
- Whether or not of record

Adding Administrative Agencies may be the greatest change under the SCRA!

JURISDICTION §512

- ***All*** U.S. Courts & Administrative Agencies
- ***Civil*** Cases Only
- May apply to ***ANY*** Court which would otherwise have jurisdiction



PERSONS SECONDARILY LIABLE §513

- Court may grant same relief to
  - Sureties
  - Guarantors
  - Endorsers
  - Accommodation makers
  - Co-makers
  - Other person liable

WAIVER OF RIGHTS §517

- May waive protection
- Waiver must be in writing
  - **Contract, lease or bailment**
  - **Mortgage, trust, deed, lien, other security**
  - **Repossession, retention, foreclosure, sale, forfeiture, taking possession of property**
- Must be made during or after period of service

EXERCISE OF RIGHTS NOT TO AFFECT FUTURE TRANSACTIONS §518

- Claiming rights under SCRA cannot be basis for:
  - **Determination by lender that the member is unable to pay**
  - **Denial or revocation of credit**
  - **Change in terms of existing credit arrangement**
  - **Refusal to grant credit to the member**
  - **Adverse credit report**
  - **Refusal by insurer to insure member**
  - **Identifying SM as member of NG or Reserve**
  - **Changing the conditions or terms of insurance**

LEGAL REPRESENTATIVES §519

- Adds a provision permitting a legal representative of the Servicemember:
  - **attorney acting on the behalf of a Servicemember; or**
  - **individual possessing a power of attorney**
- Legal representative can take the same actions as a Servicemember

EXTENSION OF PROTECTION §§514 AND 538

- §514 - Citizens of the U.S. serving with allied forces if service similar to “military service”

- §538 - Dependents of SM if dependents ability to comply is Materially Affected by SM’s military service they may apply for the protections in Title III

PROTECTION AGAINST DEFAULT JUDGMENTS §521

- Defendant has not Appeared
- Plaintiff's Affidavit, Certificate, etc.
  - Defendant not in military, and
  - Factual basis; or
  - Unable to determine status - court may require plaintiff to bond
- Court-Appointed Attorney before entering default
  - Duties? Payment?

NON-MILITARY CERTIFICATE

- Defense Manpower Data Center (DMDC)
- Provide Certificate as to Military Service on the Internet
- Requires application and password
- Fax request for application to 703-696-4156 or letter to DMDC, Military Verification

  1600 Wilson Blvd, Suite 400
  Arlington, VA 22209

PROTECTION AGAINST DEFAULT JUDGMENTS §521

- Court ***SHALL*** Stay Proceedings
  - Minimum 90 Days
  - Application of counsel or court's own motion
- When Court Determines
  - May be a defense that cannot be presented w/o presence of Defendant, OR
  - After due diligence counsel has been unable to contact Defendant or otherwise determine if a meritorious defense exists

PROTECTION AGAINST DEFAULT JUDGMENTS §521

- Court ***SHALL*** reopen a Judgment entered while SM on Active Duty or within 60 days thereafter, when
  - SM applies on Active Duty or within 90 days thereafter, and shows
  - Material Affect, plus
  - Meritorious Defense
- ✓*BONA FIDE* Purchasers protected

STAY PROVISIONS OF SCRA §522

- Temporary Delay In Civil Actions Until Member Can Appear
  - During Period of Service plus 90 days
  - Servicemember has received notice of proceeding

- Automatic 90 Day Stay if:
  - show military duty materially affects ability to appear, and date when can appear, AND/OR (?)
  - CO letter states duty prevents appearance and leave not authorized

STAY PROVISIONS OF SCRA §522

- Application for a stay under **§522** does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

STAY PROVISIONS OF SCRA §522

- May apply for additional stay if duties materially affect at initial application, or later if SM is unavailable to *prosecute or defend the action.*
- If Court does not grant additional stay shall appoint counsel to represent SM

Again query attorney's duties, who pays fee?

FINES & PENALTIES
§523

- ***NO*** penalties under a contract if performance stayed by Court, and if no stay -

- Court may reduce or waive fine or penalty if

  - **SM was in military service at time of fine/penalty**

  - **Performance materially affected by military service**

STAY OR VACATION OF JUDGMENTS §524

- If Military Service materially affects compliance with Judgment or Order

- Court ***SHALL*** on application of SM
  - Stay execution; ***and***
  - Vacate or stay attachment or garnishment

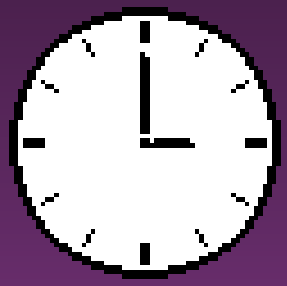
- Court may also act on its own motion

DURATION OF STAYS §525

- May be for the period of service plus 90 days, or any part thereof
- Court may set the terms and amounts of any installment payments
- Plaintiff may proceed against any codefendants not in service

STATUTE OF LIMITATIONS §526

- Period of Military Service ***NOT*** included
- In any period limited by law, regulation or order to bring any action or proceeding (including redemption of real property)
- By or against SM or heirs or assigns



- Does not apply to IRS
- *Material affect NOT required*

MAXIMUM RATE OF INTEREST §527

- ***PRE-SERVICE*** loans incurred by SM, or SM and spouse jointly
  - But Not Guaranteed Student Loans (20 USC §1078(d))
- CAP of 6% per annum, all excess ***FORGIVEN***
- CAP rescinded if creditor shows no material affect
- Private right of action

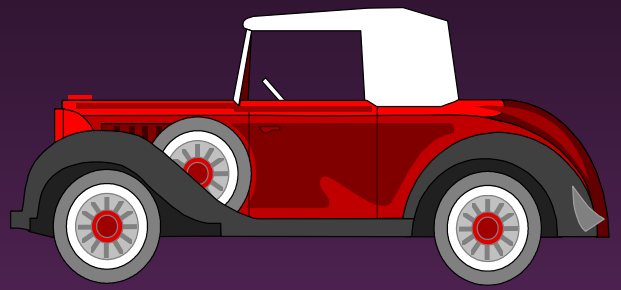
EVICTIONS & DISTRESS §531

- Can ***ONLY*** evict upon Court order
  - Applies to SM or Dependants
  - Rent does not exceed $2,400/mo (In 2003)
  - Amount CPI adjusted annually (2004=$2,465)
  - Ability to pay Materially Affected by service
  - Court ***SHALL*** stay for minimum 90 days, or
  - Adjust the lease obligations
- Criminal sanctions for violation
- *Dependents have right to invoke*

INSTALLMENT CONTRACTS §532

- No termination or repossession w/o court order
- ***Pre-service*** obligation
- Purchase, lease, or bailment of real or personal property
- Payment or deposit made prior to service
- Misdemeanor offense
- Court may order repayment to SM to terminate, or
- ***SHALL*** stay the proceeding if SM's ability to comply is Materially Affected and SM applies– length of stay determined by Court
- May stay on Court's own motion

MORTGAGE FORECLOSURE PROTECTION §533



Similar Protection as for Installment Contracts under §302 But Applies to Mortgages and Securities on Real and Personal Property

Applicable: Service + 90 Days

SETTLEMENT OF STAYED CASES §534

- Personal Property lien foreclosure, repossession, or contract termination
- Court may appoint 3 appraisers
- Court may order SM's equity repaid as a condition
  - Only if there will be no undue hardship to SM's dependants

RIGHT TO TERMINATE LEASE §535

- For home, business, or agricultural purposes, ***AND*** motor vehicles
  - Entered **before** active duty, and for vehicles active duty for at least 180 days, or
  - Leases during active duty and receives
    - **PCS orders or deploy for 90 days for Real Estate**
    - **PCS out of U.S. or deploy for 180 days - Vehicles**
- Written notice & copy of orders, and return vehicle within 15 days
- No need to show material affect

TERMINATION OF LEASES §535

- Termination Effective
  - Premises with monthly rent - 30 days after next payment due,
  - Premises with other rent payment - last day of month after notice
  - Vehicles - upon notice and return w/in 15 days
- Rent pro rated
- Vehicles, no termination charge, but all other charges in lease
- Any rent paid in advance to be refunded

TERMINATION OF LEASES §535

- RELIEF TO LESSOR.—Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a Servicemember may be modified as justice and equity require.

PROTECTION OF LIFE INSURANCE §536

- Policy assigned as security prior to Military Service
- Need Court order to exercise rights, unless
  - **Written consent of insured**
  - **Premiums due and unpaid**
  - **Death of insured**
- During period of service plus 1 year
- Court may refuse to grant order if ability to comply Materially Affected by service
- Misdemeanor
- Other remedies preserved

ENFORCEMENT OF LIENS §537

- ***ONLY*** Court ordered enforcement
- Liens for ***ANY*** reason
- Court ***SHALL*** stay or adjust the obligations of all parties if SM applies and ability to comply is Materially Affected
- Court may do same on own motion
- Misdemeanor to knowingly use self-help
- Other remedies preserved

TITLE IV
LIFE INSURANCE

Enforced by the Secretary of Veterans Affairs

Sec. 541. Definitions.

Sec. 542. Insurance rights and protections.

Sec. 543. Application for insurance protection.

Sec. 544. Policies entitled to protection and lapse of policies.

Sec. 545. Policy restrictions.

Sec. 546. Deduction of unpaid premiums.

Sec. 547. Premiums and interest guaranteed by United States.

Sec. 548. Regulations.

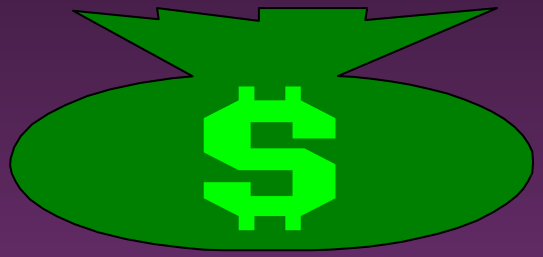
Sec. 549. Review of findings of fact and conclusions of law.

TAXES RESPECTING PERSONAL PROPERTY, ETC. §561

- Tax or assessment falls due and is unpaid
- Before or during military service
- Personal Property, including vehicles, or
- Real Property occupied by SM, dependants, or employees
  - **Before entry into military service, and**
  - **Remains unpaid**
- Court order to sell only if no Material Affect
- Court may stay for period of service plus 180 days
- SM has right to redeem for service plus 180 days

INCOME TAXES
§570

- Show Material Affect
- Payment of Federal, ,State or Local tax deferred for period of service plus 180 days
- No interest or penalty
- Statute of limitation suspended for period of service plus 270days



RESIDENCE FOR TAX PURPOSES §571

- Income and personal property tax
- Taxed only by state of SM's domicile
- Applies only to Military pay
- May not use the Military pay to gross-up combined income into a higher bracket

INAPPROPRIATE USE OF ACT §581

If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred

or acquired with the intent to delay the just enforcement of such right by taking advantage of this Act, the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

CERTIFICATES OF SERVICE §582

- A Certificate of the Service Secretary shall be prima facie evidence as to all aspects of a person's military service, or non-service.
- Such a certificate shall be furnished upon application
- A SM missing in action is presumed to continue in service until accounted for.

INTERLOCUTORY ORDERS §583

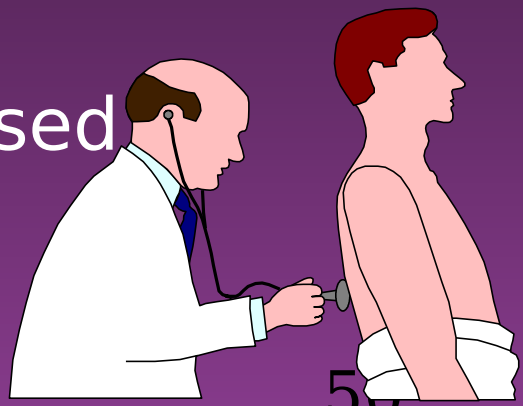
An interlocutory order issued by a court under this Act may be revoked, modified, or extended by that court upon its own motion or otherwise, upon notification to affected parties as required by the court.

POWERS OF ATTORNEY §592

- Power of Attorney extended during "missing" status
- POA executed during service or after call-up
- Attorney-in-fact is spouse, parent, or other named relative
- Applies to special or general
- Can over-ride by specific language in POA

MALPRACTICE INSURANCE PROTECTIONS §593

- Physicians, lawyers and other professionals designated by SECDEF
  - Suspends policy during active duty; No premiums owed during suspension
  - Reinstatement at original rates
  - Stay of actions
  - Statute of Limitations increased by period of suspension



OTHER PROTECTIONS

- Private Health insurance reinstated §594
- State of domicile for voting §595
- May not use personal assets to satisfy trade or business obligations even though SM personally liable §596

KEY CONCEPTS

- ✓ Protection Of Rights, Not Avoidance Of Responsibility
- ✓ **“Material Affect”** -- Prerequisite For Most SCRA Protections
- ✓ Invocation of Protections Cannot Be Used Against Servicemember or Dependant
- ✓ Private Cause Of Action
- ✓ Criminal Sanctions
- ✓ Liberal Construction